

OA 91 Criminal Complaint

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

FILED

SEP 10 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

V.

LUIS HERRERA

CRIMINAL COMPLAINT

Case Number: _____

(Name and Address of Defendant)

3 09 70815 BZ

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about February 19, 2009 in San Mateo County, in the Northern District of California defendant(s) did,
(Track Statutory Language of Offense)

See Attachment A

in violation of Title _____ United States Code, Section(s) _____

18 U.S.C. Secs. 1959(a)(1) and 2 (Murder in Aid of Racketeering)

18 U.S.C. Secs. 924(j) and 2 (Use/Possession of Firearm in Furtherance of Crime of Violence Resulting in Murder)

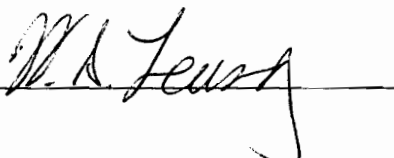
I further state that I am a(n) Special Agent of ICE and that this complaint is based on the following facts:

See Attachment B

Continued on the attached sheet and made a part hereof:


☒ Yes☐ No

Approved

As To W.S. Wilson Leung
Form: AUSA

ALICIA MACDONALD

Name/Signature of Complainant



Sworn to before me and subscribed in my presence,

September 10, 2009

Date

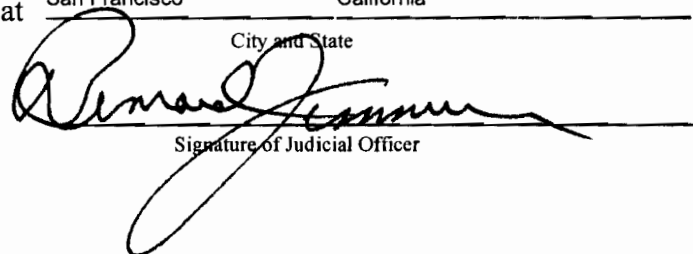
at San Francisco California

City and State

HON. BERNARD ZIMMERMAN

U.S. MAGISTRATE JUDGE

Name & Title of Judicial Officer



Signature of Judicial Officer

ATTACHMENT A

COUNT ONE

(Murder in Aid of Racketeering)

1. At all times relevant to this Complaint, *La Mara Salvatrucha*, also known as “MS-13,” including its leadership, its membership, and its associates, constituted an “enterprise,” as that term is defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact, although not a legal entity, which was engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

2. At all times relevant to this Complaint, MS-13, through its members and associates, engaged in racketeering activity as that term is defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), including acts involving murder, attempted murder, narcotics trafficking, and extortion.

3. On or about February 19, 2009, in the Northern District of California, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, the defendant, **LUIS HERRERA**, a/k/a “Killer,” and others known and unknown, unlawfully, knowingly, and intentionally did murder a person, in violation of California Penal Code Sections 187, 188, and 189.

All in violation of Title 18, United States Code, Sections 1959(a)(1) and 2.

COUNT TWO

(Use/Possession of a Firearm in Furtherance of Crime of Violence Resulting in Murder)

1. On or about September 2, 2008, in the Northern District of California, the defendant, **LUIS HERRERA**, a/k/a “Killer,” and others known and unknown, unlawfully, willfully, and knowingly, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, namely, the murder in aid of racketeering charged in Count One of this Complaint, did use and carry a firearm, and in furtherance of such crime, did possess a firearm, and in the course of that crime did cause the death of a person through the use of a firearm, which killing is murder as defined in Title 18, United States Code, Section 1111(a).

All in violation of Title 18, United States Code, Section 924(j)(1).

ATTACHMENT B

AFFIDAVIT OF ALICIA MACDONALD

I, ALICIA MACDONALD, Special Agent with Immigration and Customs Enforcement, being duly sworn, do declare and state:

I. INTRODUCTION

1. I am a Special Agent with Immigration and Customs Enforcement ("ICE") and have been so employed since September 2008. I am presently assigned to ICE's San Francisco office, where I am currently assigned to the ICE Operation Community Shield Gang Unit. As part of my duties within this unit, I investigate violations of federal law, including violent crimes and crimes committed by street gangs.
2. This Affidavit is made in support of a Criminal Complaint charging **LUIS HERRERA**, a/k/a "Killer," with: (i) murder in aid of racketeering, in violation of Title 18, United States Code, Sections 1959(a)(1) and 2; and (ii) use and/or possession of a firearm in furtherance of a crime of violence resulting in murder, in violation of Title 18, United States Code, Sections 924(j) and 2.
3. Because this Affidavit is submitted for the limited purpose of establishing probable cause for an arrest warrant, I have not included each and every fact known to me that supports probable cause for arrest. Rather, I have set forth only the facts that I believe are necessary to support the lawful arrest of the individual listed in this Affidavit.
4. Where statements made and actions taken by other individuals (including other Special Agents and law enforcement officers) are referenced in this Affidavit, such statements and actions are described in sum and substance and in relevant part only. Similarly, where information contained in reports and other documents or records are referenced in this Affidavit, such information is also described in sum and substance and in relevant part only.

II. BACKGROUND: *LA MARA SALVATRUCHA*

5. Based on my experience, training, investigation --- which includes interviews with former members of the gang referenced below as *La Mara Salvatrucha* --- and conversations with, and reviewing reports of, other law enforcement officers --- including many with extensive experience investigation *La Mara Salvatrucha* --- I know that at all times relevant to this Complaint, *La Mara Salvatrucha*, also known as "MS-13," is a street gang that was formed in Los Angeles, California, during the 1980s. MS-13 members principally are of El Salvadoran background, although many members have roots in other countries, such as Honduras and Guatemala. MS-13 has local gangs, or "cliques," located throughout the world. Based on my experience, training, and investigation, I know that there is an MS-13 clique in San Francisco, California, which is centered on 20th Street in the Mission District, the members of which call themselves "20th Street" or the "20th Street Clique." From my time investigating MS-13 as part of my assignment to the Operation Community Shield Gang Unit, I know that many members of the 20th Street Clique are personally known to

members of the San Francisco Police Department ("SFPD") and other law enforcement officers, especially members of the SFPD's Gang Task Force ("GTF").

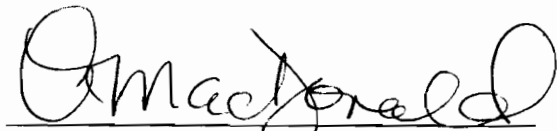
6. Based on my experience, training, investigation, and conversations with, and reviewing the reports of, other law enforcement officers, I know that at all times relevant to this Complaint, MS-13 constitutes an "enterprise" as defined under Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact, although not a legal entity, which was engaged in, and the activities of which affected, interstate and foreign commerce. MS-13 constitutes an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise, including enriching the members of MS-13 and preserving the power of the gang through fear, violence, and intimidation. MS-13 has been named as the enterprise in various racketeering and racketeering-related cases throughout the United States. Indeed, an ICE investigation in which I participated resulted in the indictment of 24 individuals in the Northern District of California on racketeering-related charges arising from their participation in MS-13. See United States v. Cerna, et al., Cr-08-0730-WHA.
7. Based on my experience, training, investigation, and conversations with, and reviewing the reports of, other law enforcement officers, I know that at all times relevant to this Complaint, members and associates of MS-13 have engaged in "racketeering activity," including acts involving murder, attempted murder, narcotics trafficking, and extortion, as defined under Title 18, United States Code, Sections 1959(b)(1) and 1961(1). Members and associates of MS-13 violently clash with members of rival gangs over control of drug territory and extortion victims, as well as over gang pride. Indeed, based on conversations with other law enforcement officers as well as with former members of MS-13, a member or associate of MS-13 is expected to attack, or aid in the attack, of a member or suspected member of a rival gang if the opportunity arises. MS-13 members are also expected to retaliate against attacks by, or even mere insults from, rival gang members. Failure to do so would be considered cowardice and would result in loss of standing within the gang or even punishment by the gang. Conversely, greater respect is given to members who engage in more frequent and more audacious acts of violence against rivals (real or perceived), as well as to those who assist their fellows in attacks. I have also learned through conversations with law enforcement officers and former members of MS-13 that prospective members often must commit crimes with other gang members on behalf of the gang in order to prove their loyalty to the gang. Failure to do so will result in rejection by the gang.
8. Based on my experience, training, investigation, and conversations with, and reviewing the reports of, other law enforcement officers, I know that in San Francisco, members of the 20th Street Clique generally identify themselves as a *Sureño* gang (which is generally composed of individuals of Hispanic descent with ties to Southern California and who claim blue as their gang color), and the principal rival to the 20th Street Clique is the *Nortebños* gang (which is generally composed of individuals born in the United States with ties to Northern California and who claim red as their gang color). Members of these two rival factions often rob, fight, and shoot each other, and many violent incidents have arisen from nothing more than an exchange of insults between a *Nortebño* and a member of the 20th

Street Clique. Indeed, innocent bystanders who were mistaken for gang members have been attacked by members of MS-13 in their war with the *Norteros*. Moreover, members of one faction often drive through territory claimed by another faction in order to go "hunting," i.e., commit acts of violence against rival gang members.

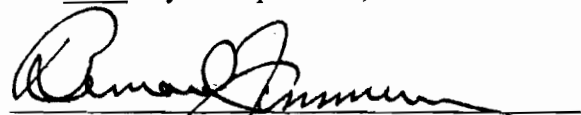
III. THE FEBRUARY 19, 2009 MURDER AT THE DALY CITY BART STATION

9. I learned the following from reviewing reports of the Daly City Police Department ("DCPD"), the SFPD, as well as conferring with officers of the DCPD, SFPD, and other law enforcement agencies:
 - a. During the evening of on or about February 19, 2009, four young men (the "Victims") were in a car that was stopped at a traffic light near the Daly City BART Station. Two men approached the Victims' car on foot and fired multiple shots into the car, hitting three of the four Victims and killing one of them. The police later determined that the guns used in this apparently unprovoked attack was an Uzi and a .380-caliber handgun.
 - b. One witness ("Witness-1") to this shooting reported to police that, following the shooting, the shooters got into a silver or light beige Honda driven by another person and drove away. Another witness ("Witness-2") provided what s/he could recall of the first four numbers/letters of the Honda's license plate, i.e., 4HOB.
 - c. On or about February 20, 2009, the SFPD recovered an abandoned Honda in San Francisco's Castro District (the "Abandoned Honda") that had been reported stolen. The license plate number for the Abandoned Honda was 4HAB465, which is consistent with three of the first four numbers/letters of the license plate that Witness-2 reported was on the getaway vehicle used during the Daly City BART Station shooting. In addition, the police found inside the Abandoned Honda an item that was later examined for fingerprints, and a fingerprint matching that of **LUIS HERRERA** was found on the item.
 - d. On or about March 4, 2009, officers patrolling the Mission District of San Francisco stopped a car that had been reported stolen. **LUIS HERRERA** was the driver and three other individuals were passengers. During a subsequent search of the vehicle, a loaded Lorcin .380-caliber handgun was found in the car. All four individuals were arrested and charged with possession of a stolen vehicle and possession of a firearm.
 - e. A SFPD criminalist test fired the Lorcin .380-caliber handgun recovered from the car driven by **LUIS HERRERA** on March 4, 2009 and compared the test fired casings and spent rounds with the shell casings and spent rounds recovered from the scene of the February 19, 2009 Daly City BART Station shooting. The criminalist determined that the casings and spent rounds matched, i.e., that the Lorcin .380-caliber handgun was used in the Daly City BART Station shooting.

10. Another agent and I interviewed an individual ("Witness-3") who is presently detained and awaiting trial on state robbery charges. Among other things, I learned the following from this individual:
- a. **LUIS HERRERA** was once housed with the individual.
 - b. **LUIS HERRERA** boasted that he drove the getaway vehicle that was used for the February 19, 2009 Daly City BART Station shooting.
 - c. **LUIS HERRERA** identified the shooters by their street names.
 - d. **LUIS HERRERA** described the actions of the shooters and the weapons used.
 - e. **LUIS HERRERA** stated the reason he is in custody is because he was stopped by SFPD (on March 4, 2009) with the gun that was used in the February 19, 2009 Daly City BART Station shooting.
 - f. **LUIS HERRERA** stated on the day he was stopped by SFPD (March 4, 2009), they were going to kill *Norteños*.
11. Based on my investigation of MS-13 as well as my conversations with other law enforcement officers and former MS-13 members, I know that **LUIS HERRERA** is an MS-13 member who uses the gang moniker "Killer." I also know that the two individuals who **HERRERA** told Witness-3 were the gunmen for the Daly City BART Station shooting are also MS-13 members.
12. Accordingly, based on the foregoing, I respectfully submit that probable cause exists to believe that **LUIS HERRERA**, a/k/a "Killer," has committed violations of Title 18, United States Code, Sections 1959(a)(1) and 2 (murder in aid of racketeering), and Sections 924(j) and 2 (use/possession of a firearm in furtherance of a crime of violence resulting in murder. I therefore respectfully request a no-bail warrant for the arrest of **HERRERA**.


ALICIA MACDONALD
Special Agent
Immigration and Customs Enforcement

Sworn to and subscribed before me
this 10 day of September, 2009


HONORABLE BERNARD ZIMMERMAN
UNITED STATES MAGISTRATE JUDGE